

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.1939 OF 2006

Kokan Railway Corporation Ltd. ... Appellant.
V/s.
Shri Mahadev Dhondu Gawade & Ors. ... Respondents.

Ms. Asha Bhambwani, for the Appellant.
Mr. B.G. Tangsali, for Respondent No.1
Mr. Y.M. Nakhawa, A.G.P.

**CORAM : A.S. OKA, J.
DATE : 11TH AUGUST 2006**

P.C. :

1. Admit. Learned A.G.P. waives service for Respondent No.2. The learned Advocate for the Respondent No.1 waives service. He states that Vakalatnama will be filed within a period of 3 weeks from today.

2. Considering the facts and circumstances of the case, taken up forthwith for final hearing. The challenge in the First Appeal is to an award made under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred under the said Act). It is not in dispute that the Appellant Konkan Railway Corporation Ltd. is the acquiring body for whose benefit the land subject matter of the impugned award has been acquired. It is also not in dispute that the Appellant was not made party to the reference under Section 18 of the said Act and even a notice of the reference was not issued notice to the Appellant as required by Section 20 of the said Act. It is well settled position of law that acquiring body has a

right to participate in hearing of a reference under Section 18 of the said Act and the acquiring body has right to lead evidence so far as market value of the acquired land is concerned.

2. The issue involved in this Appeal is covered by the

decision of a Division Bench of this Court (Coram : S.B. Mhase and D.B. Bhosale, JJ.) dated 1st March 2005 in First Appeal No.1003 of 2003. Hence, this appeal deserves to be disposed of in terms of the decision of the Division Bench.

3. Hence I pass the following order :-

(a) The impugned Judgment and Award is quashed and set aside and Land Acquisition Reference No.63 of 1994 is restored to the file.

(b) The parties are directed to appear before the learned Civil Judge, Senior Division, Ratnagiri on 11th September 2006 at 11.00 a.m. The reference Court will permit the Appellant to appear in the reference and to adduce evidence. The Appellant will be entitled to apply to the reference Court for recalling the witnesses, if any, examined by the claimant for cross examination. The claimant will be entitled to lead additional evidence.

(c) The learned Reference Court will decide the reference

after considering the evidence which is already on record and the evidence which will be led after demand. The Reference Court will decide the reference as expeditiously as possible and preferably on or before 30th April 2006.

(d) The Appellant has deposited 50% of the amount due and payable as per the impugned award. The Trial Court shall release one half of the said amount deposited by the Appellant in favour of the original claimant without furnishing any security. If the claimant furnishes a solvent surety in respect of the balance amount deposited by the Appellant, even the balance amount shall be released in favour of the original claimant.

(e) Appeal is partly allowed in above terms. There will be no order as to costs.

(f) Parties and concerned court to act upon the authenticated copy of the order.

(g) Office is directed to send writ of this order forthwith. The order will be communicated to the concerned Court by fax and/or by E-mail.

JUDGE